

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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TACUMA J. M'WANZA,

Case No. 3:16-cv-00590-MMD-WGC

Y

Plaintiff,

## ORDER

Q. BYRNA et al.,

## Defendants.

14 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by  
15 a former state prisoner. On September 18, 2017, this Court issued an order denying the  
16 application to proceed *in forma pauperis* for prisoners as moot because Plaintiff was no  
17 longer incarcerated. (ECF No. 7 at 1.) The Court ordered Plaintiff to file a fully complete  
18 application to proceed *in forma pauperis* for non-prisoners or pay the full filing fee of  
19 \$400.00 within thirty (30) days from the date of that order. (*Id.* at 2.) The thirty-day period  
20 has now expired, and Plaintiff has not filed an application to proceed *in forma pauperis*  
21 for non-prisoners, paid the full filing fee, or otherwise responded to the Court's order.

22 District courts have the inherent power to control their dockets and “[i]n the  
23 exercise of that power, they may impose sanctions including, where appropriate . . .  
24 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831  
25 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure  
26 to prosecute an action, failure to obey a court order, or failure to comply with local rules.  
27 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance  
28 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for

1 failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856  
2 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring  
3 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833  
4 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*  
5 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and  
6 failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to obey  
8 a court order, or failure to comply with local rules, the court must consider several factors:  
9 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
10 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
11 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
12 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
13 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

14 In the instant case, the Court finds that the first two factors, the public's interest in  
15 expeditiously resolving this litigation and the Court's interest in managing the docket,  
16 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs  
17 in favor of dismissal, since a presumption of injury arises from the occurrence of  
18 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See  
19 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy  
20 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor  
21 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
22 the court's order will result in dismissal satisfies the "consideration of alternatives"  
23 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
24 at 1424. The Court's order requiring Plaintiff to file an application to proceed *in forma*  
25 *pauperis* for non-prisoners or pay the full filing fee within thirty (30) days expressly stated:  
26 "IT IS FURTHER ORDERED that, if Plaintiff fails to timely comply with this order, the  
27 Court shall dismiss this case without prejudice." (ECF No. 7 at 2.) Thus, Plaintiff had  
28 adequate warning that dismissal would result from his noncompliance with the Court's

1 order to file an application to proceed *in forma pauperis* for non-prisoners or pay the full  
2 filing fee within thirty (30) days.

3 It is therefore ordered that this action is dismissed without prejudice based on  
4 Plaintiff's failure to file an application to proceed *in forma pauperis* for non-prisoners or  
5 pay the full filing fee in compliance with this Court's September 18, 2017, order.

6 It is further ordered that the Clerk of Court enter judgment accordingly.

7 DATED THIS 27<sup>th</sup> day of October 2017.

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10 MIRANDA M. DU  
11 UNITED STATES DISTRICT JUDGE  
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